THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 23794 OF 2005

13th December 2005

Between:

Mr. Shaik Mansoor and others. …Petitioners

A N D

1. The District Collector, Hyderabad District

Nampally Road, Hyderabad and others …Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 23794 OF 2005

O R D E R :

1. In this writ petition a challenge has been made to the proceedings Nos.11/6653/2004 dated 15-3-2005 and proceeding No.11/12/6653/2004 dated 21-10-2005 of the Joint Collector and Additional District Magistrate, Hyderabad District whereby and where under 'No Objection Certificate' issued in favour of the petitioners under proceedings No. 12/6653, dated 30-11-2004 came to be cancelled.

2. The case of the petitioners in brief is as follows:

The petitioners are the absolute owners and possessors of different extent of land in Survey No.129/30 correlated to T.S.No.22, Block-K, Ward No.12 of Shaikpet village, Road No.12, Banjara Hills, Hyderabad. They filed declarations before the Special Officer and Competent Authority, Urban Land Ceiling (Ceiling and Regulation) Act, Hyderabad. Some of the petitioners were found to be non-surplus holders and some of them are found to be holding land in excess of the ceiling limit. The petitioners made a joint representation dated 1-9-2004 to the District Collector, Hyderabad –1st respondent seeking for grant of 'No Objection Certificate' as required by the Municipal Corporation, Hyderabad-3rd respondent for sanction of building permission over an extent of 7792 square meters. The Mandal Revenue Officer, Shaikpet Mandal, as well as Deputy Director, Survey and Land Records, Hyderabad submitted reports on 10-09-2004 and 29-9-2004 respectively to the District Collector, Hyderabad-1st respondent. The Joint Collector, Hyderabad-2nd respondent considered the reports and issued endorsement in proceedings No.12/6653/2004, dated 30-11-2004. The proceedings are addressed to the Municipal Corporation of Hyderabad-3rd respondent while marking copy of the same to the petitioners. In the endorsement, 2nd respondent has categorically stated that the subject land is not classified as Government land. While, the matter stood thus, the Joint Collector-2nd respondent issued letter No.11/6653/2004, dated 15-3-2005 requesting the Municipal Corporation of Hyderabad-3rd respondent and the Chief City Planner-4th respondent not to sanction building permission until further orders. There upon the petitioners submitted representation dated 13-9-2005 to the District Collector, Hyderabad-1st respondent requesting him to cancel the letter No. 11/6653/2004 dated 15-03-2005. 2nd respondent issued another letter No.11/12/6653/2004, dated

21-10-2005 where under the petitioners are informed that the request to withdraw the letter dated 15-2-2005 is rejected and 'No Objection Certificate' issued under proceeding dated 30-11-2004 has been recalled and cancelled. The Joint Collector-2nd respondent also issued proceedings No.11/12/6653, dated 21-10-2005 recalling 'No Objection Certificate' issued in respect of Survey No.129/30. The relevant portion of the order passed by the Joint Collector, Hyderabad District -2nd respondent reads as follows:

> "*In fact one Sri Anwarulla Pasha s/o: Abdulla Pasha filed the LGC case against objector herein Sri K. Amarender Reddy and others thereby claiming to be son of Sri Abdulla Vakil (Pattadar) and that alleged son and the said objector and persons trying alleged to grab part of land in Sy.No.129/30. All these facts casts cloud in the claim of the applicants and as such the 'No Objection Certificate' (NOC) granted earlier is recalled and cancelled.*
>
> *It is also found during enquiry that no title is passed to Sri K.Amarender Reddy or to his predecessor-in-title as alleged Sale Deed doc.No.252/1357 Fasli is stated to have not been registered by Registration Office and further there are no orders in favour of Sri K.Amarender Reddy conferring rights on the question lands by any forum.*
>
> *For the above said reasons I am of the view that there is cloud to the ownership and possession of both the applicants and objector on the said property and until the said cloud is cleared on the ownership and possession and the title confirmed by any competent Court of Law, the 'No Objection Certificate' (NOC) issued in the survey number 129/30 in Shaikpet village and Shaikpet Mandal correlated to TS No.22, Block K, Ward No.12 to an extent of 7792 square meters sis recalled and cancelled".*

3. According to the petitioners, the Joint Collector-2nd respondent has transgressed his jurisdiction and powers in observing that cloud is created on the ownership and possession and title of the petitioners over the property. For better appreciation of the grievance of the petitioners, I deem it appropriate to refer para-5 of the writ affidavit and it is thus;

> "*I submit that pursuant to the application made by us for the construction on 'The subject lands' the 3rd respondent corporation is considering for granting permission on 'The subject lands' to us for effecting the construction on the subject*

lands. While the matter stood thus the 1st respondent issued letter NO.11/6653/2004 dt.15-03-2005 (Annexure P7) addressed to the 3rd and 4th respondents requesting them not to sanction building permission until further orders. Aggrieved by the said letter No.11/6653/2004 dated 15-03-2005 (Annexure P7) of the 1st respondent submitted a representation dt. 13-9-2005 (Annexure P8) to the 1st respondent requesting him to cancel his letter No. 11/6653/2004 dated 15-03-2005 (Annexure P7). The 1st respondent issued another letter No.11/12/6653/2004 dated 21-10-2005 (Annexure P9) where under we are informed that our request to withdraw the letter of the 1st respondent dt. 15-03-2005 (Annexure P7) is rejected and the 'No Objection Certificate' issued by the 1st respondent office dated 30-11-2004 (Annexure P4) is recalled and cancelled duly enclosing an order dt. 21-10-2005 (Annexure P9) of the 2nd respondent. In the said order the 2nd respondent entertained the claims of third party and sitting in judgment of the claims of the third parties took the view that there is cloud to the ownership and possession between ourselves and the third parties. I submit that the 2nd respondent has no jurisdiction to entertain the claims of third parties and sit in judgment over the rival claims in respect of the ownership of the property much less the subject lands. This exercise of the 2nd respondent is nothing but exercising the power of a Civil Court. Hence respondent No.2 has transgressed its jurisdiction and power. I further submit that the 2nd respondent has no jurisdiction to consider the rival claims of the third party to 'The subject lands' more so in view of the fact that all those rival claims set up by the third parties to 'The subject lands' were considered in detail by the Special Officer and Competent authority under the Urban Land (Ceiling and Regulation) Act vide proceedings NO. E2/1661/2004, dated 27-08-2005 (Annexure P2) and the very same rival claims were rejected which became final even before the Statutory Appellate Authority. The Hon'ble High Court also while considering the Writ Petition No.1457 of 2004 filed by us also rejected every claim of those third parties who filed petition to implead them as party respondent to our writ petition. However, the 1st respondent has no jurisdiction either to grant the 'No Objection Certificate' or to recall and to cancel the same and hence such granting of 'no objection certificate' and later on recalled and cancelled by 1st respondent shall not have any bearing on the 3rd and 4th respondents in

considering for granting the permission for the construction over 'The subject land' and the No Objection Certificate granted by the 1st respondent and later on recalled and cancelled by the 1st respondent shall not be binding on the 3rd and 4th respondents".

4. Respondent No.5 came to be impleaded as per orders in W.P.M.P.No. 31978 of 2005 dated 28-11-2005; respondent No.6 came to be impleaded as per orders in WPMP No. 31642 of 2005 dated 29-11-2005 and Respondents No.7 and 8 came to be impleaded as per orders in W.P.M.P.No.32393 of 2005 dated 29-11-2005 .

5. The case of the 5th respondent is that he purchased Ac. 3-13 guntas of land in Survey No.129/30 (old) Shaikpet village and mandal, Hyderabad district from D.Ramachandra Reddy under an agreement of sale cum registered power of attorney, and his vendor purchased the land from Abdulla Pasha under registered sale deed dated 26 Ardhibest 1357 Fasli. His vendors name was mutated in the revenue records. The State filed LGC No.129 of 1989 against his vendor and another in respect of 3837 square meters inT.S.No.18 and 21. The said L.G.C. ended in dismissal on 16-08-1993. The petitioners claim the property under oral gift dated 12-05-1961. Issuance of 'No Objection Certificate' by the Government is not statutory requirement and therefore, the petitioners cannot claim for issuance of 'No Objection Certificate' as a matter of right from the respondents No. 1 and 2. He made series of representations to the official respondents to recall the 'No Objection Certificate' issued in favour of the writ petitioners. The respondents No. 1 and 2, after hearing both the parties, recalled 'No Objection Certificate' dated 30-11-2004 under proceedings dated 21-10-2005. Thus the order impugned in the writ petition does not warrant interference.

6. It is the case of 6th respondent that she is the owner of house plot admeasuring 910 square yards in Survey No. 129/30 correlating to Survey No. 340 (new) in road No. 12, Banjara Hills, Hyderabad. The said plot forms part of Women's Co-operative House building Society of which she is a member. The society purchased an extent of Ac. 3-13 guntas in Survey No.129/30 of Shaikpet village, Hyderabad Hyderabad from V.V.Rao, V.Bhujanga Rao and Mrs. E.Shankaramma under a registered sale deed dated 23-2-1966. The vendors of the society purchased the said extent of land under a registered sale deed dated 28-12-1964 from Shaik Ahmed Amoodi who had purchased the land from one Mr. Abdullah Pasha. The society and others including

herself filed a suit for declaration and consequential injunction being O.S.No.106/1991 on the file of V Senior Civil Judge, City Civil Court, at Hyderabad. The suit ended in decree on 14-6-2004. The defendants therein challenged the judgment and decree passed in O.S.No.106 of 1991 by filing C.C.C.A.No.232 of 2004, wherein order of status quo has been granted. She submitted her application dated 17-1-2005 before the Deputy Director Survey and Land Records, Hyderabad for demarcation of Ac. 3-13 guntas in Survey No.129/30 of Shaikpet village, Hyderabad. When the Deputy Director of Survey and Land Records issued a memo dated 23-4-2005 expressing his inability to comply the request in view of pendency of O.S.No.1501 of 2004 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad, she filed writ petition No. 10531 of 2005 and the said writ petition came to be disposed of directing the Deputy Director, Survey and Land records, to consider her application for demarcation of the land. The petitioners under the guise of building permission is seeking to grab her property, which otherwise they are not entitled for. The land admeasuring Ac. 3-13 guntas is in exclusive possession of members of Women's Co-operative House Building Society. The petitioners are never in possession of the land at any point of time. K.Amarender Reddy who has filed objection for grant of 'No Objection Certificate' in favour of the petitioners is one of the defendants in O.S.No.106 of 1991. She too filed objections before the District Collector, Hyderabad for 'No Objection Certificate' issued in favour of the writ petitioners. The order passed by the District Collector canceling 'No Objection Certificate' in favour of the writ petitioners is legal and proper and the same is not liable to be interfered.

7. The case of the respondents 7 and 8 is that the property originally belonged to one Abdullah Pasha. In 1342 Fasli Abdullah Pasha orally gifted the said property to one Shaik Abdullah. Subsequently the oral gift was confirmed in writing by way of a Memorandum of Acknowledgement. On an application made by Shaik Abdullah, the then Tahsildar, Hyderabad West Taluk, referred the matter to the Revenue Assistant, who enquired the matter and submitted his report in File NO.112/13 of 1342 Fasli confirming the gift. However, the mutation was not implemented in the revenue records. Shaik Abdullah sold the said land to one Shaik Ahmed Amoodi through a registered sale deed dated 28-12-1964. Shaik Ahmed Amoodi, in turn, sold the said land to 4 persons viz. 1) V.V. Rao, 2) M.Bhujanga Rao, 3) Smt. Kishori Bhujanga

Rao and 4) Smt. E.Shankaramma under a registered sale deed dated 23-2-1966 bearing document No. 420/66. The said four purchasers were in possession and enjoyment of their respective 1/4th share in the above mentioned land. V.V.Rao and Bhujanga Rao sold their shares to Women's Co-operative Housing Society Ltd under two registered sale deeds dated 5-1-1968 and 18-6-1967 respectively. Smt. E.Shankaramma, the grand mother of the petitioners herein, sold an extent of 2000 square yards from out of her 1/4th share to the above mentioned Society under a registered sale deed dated 15-4-1968 and retained the balance area. Similarly Smt. Kishori Bhujanga Rao entered into an agreement with the Silent Valley Co-operative Housing Society Ltd. to sell an extent of 4000 square yards from out of her 1/4th share under an agreement of sale dated 25-6-1991. Women's Co-operative Housing Society obtained layout from M.C.H. vide lay out Permission No. 25/Layout/8/70 and accordingly divided the 10,000 square yards of land purchased by it into plots and sold the same to its members through registered sale deeds. In 1991 two persons byname D.Ramchandra Reddy and P. Sri Ramulu, under the guise of an injunction order obtained in O.S.No.79/88 filed against one B.N. Reddy, illegally encroached the land. Aggrieved by the said action, Womens' Co-operative Housing Society and Silent Vally Co-operative Housing Society together with Smt. E. Shankaramma, Smt. Kishori Bhujnaga Rao and the subsequent purchasers filed O.S.No.106/1991 on the file of the V Senior Civil Judge, City Civil Cour, Hyderabad seeking decree for declaration of title and mandatory injunction. Subsequently one K. Amarender Reddy-5th respondent and P.Narender got themselves impleaded in the said suit in the year 1996 claiming title over the land from the above said two persons. Later, K. Amarender Reddy-5th respndent filed another suit O.S.No. 611 of 1996 against D. Ramchandra Reddy and P.Sri Ramulu for specific performance of the alleged agreement of sale dated 25-1-1988. In the said suit he made the plaintiffs in O.S.No.106 of 1991 as defendants 3 to 8 and sought permanent injunction against all the defendants therein. The two suits were clubbed and a joint trial was conducted. Ultimately O.S.No.106/91 ended in decree and O.S.No.611/96 ended in dismissal. 5th petitioner-Shaik Anwar Basha colluded with K. Amarender Reddy-5th respondent herein and filed a suit for injunction simplicitor against the said K.Amarender Reddy-5th respondent. The said suit being O.S.No.8 of 2004 is pending on the file of IX Additional Chief Judge, City Civil Courts, Hyderabad. The petitioners have filed another suit O.S.No.1501 of 2004 on the file of IX Senior Civil

Judge, City Civil Court, Hyderabad against theDistrict Collector, Hyderabad; Commissioner of Survey and Land Records, Hyderabad; the Deputy Director, Surveyand Land Records, Hyderabad; the Mandal Revenue Officer, Shaikpet Mandal and Shaik Ahmed amoodi for correction of entries in TSLR. The petitioners suppressing these facts have filed the present writ petition with an intention to grab the above mentioned property in collusion with K.Amarender Reddy-5th respondent.

8. Heard learned counsel for the parties.

Learned Senior counsel appearing for the petitioners submits that the respondents 1 and 2 are not justified in recalling the 'No Objection Certificate' at the instance of rival claimants. What he means to say is that the scope of 'No Objection Certificate' is to know whether the land is a Government land or a private land and the land admittedly not being a Government land, the dispute between the two private parties does not warrant recalling of 'No Objection Certificate' issued by the 2nd respondent on 30-11-2004. In support of his submissions, reliance has been placed on the decisions of this Court in ***G.Jayamala Vs. The Commisioner, Municipal Corporation of Hyderabad*** and ***The District Collector, Hyderabad Vs. Rashid Khushro Battiwala (Writ Appeal Nos. 2106, 2112 of 2002 and 167 of 2003).***

9. Learned counsel appearing for the un-official respondents contended that the respondent No.1 and 2 are justified in recalling the 'No Objection Certificate', in view of the multiplicity of the proceedings with regard to title over the property.

10. The issue requires to be adjudicated upon is whether the respondents No.1 and 2 are justified in recalling the 'No Objection Certificate' dated 30-11-2004 issued in favour of the petitioners.

11. The endorsement dated 30-11-2004 reads as follows:

> *"Sub: N.O.C. – Hyderabad District Shaikpet Mandaland village – A/o Sri Shaik Mansoor and (5) others – Issue of NOC for land in T.S.No.22, Block-K, Ward –12 Reg.*
>
> *Ref: 1) Joint representation of 1. Serva Sri Shaik Mansoor, 2. Shaik Abdul Gaffar, 3. Shaik Jamal Walli, 4. Shaik Anwar Basha, 5. SyedIftekhar Hussain Zaidi and Syed Sarfaruz Hussain, dated 1-9-2004.*
>
> *2) Mandal Revenue Officer, Shaikpet Mandal, Lr. No. E/3344/2004, dated 10-9-2004.*

3) Dy. Director, S & LR. Hyderabad Proceedings No. A3/569/2004, dated 29-09-2004.

……

The Commissioner Municipal Corporation of Hyderabad is hereby informed that the request for NOC applied for approval of plan for construction on land over an extent of 7792 square meters in Sy.No.129/30 correlated to T.S.NO.22, Block-K, Ward-12 of Shaikpet village, Hyderabad District is examined and is informed that it is not classified as Government land.

This endorsement does not constitute any title or right over the said land. IT is for the Municipal Corporation of Hyderabad to verify the legal ownership and possession of the land by the applicant before approving the plan for construction of building.

The Municipal Corporation of Hyderabad should obtain necessary clearance from the Special Officer and Competent Authority, ULC, Hyderabad in respect of the applicant as per ULC Act and Rules there under.

This endorsement does not preclude cancellation of the endorsement and further action as per rules if it is found at later date that the land is Government.

This endorsement is issued only for the purpose of considering sanction of building plan by the Municipal Corporation of Hyderabad and subject to third party claims, Court litigation, if any".

12. The purport of the above referred endorsement is that the land is not classified as Government land. It is not the case of either the official respondents or the un-official respondents that the land in question is a Government land. The 'No Objection Certificate' issued in favour of the petitioners under the above referred endorsement came to be recalled under proceedings dated 21-10-2005. The reason for recalling is because of the multiplicity of the proceedings pending between the petitioners and un-official respondents. Even if the petitioners failed in establishing their case in the Civil Court, it does not affect the nature of the land. Irrespective of the result in the proceedings pending before various Courts, the land in question continues to be a private land. Therefore, the reasons offered by the respondents 1 and 2 for cancellation of the 'No Objection Certificate' cannot be sustained.

13. In view of the foregoing discussion, the writ petition is allowed declaring the

proceedings dated 15-3-2005 and 21-10-2005 of the 2nd respondent as void and thereby restoring the proceedings dated 30-11-2004 where under 'No Objection Certificate' has been issued in favour of the petitioners. No order as to costs.

_____

Justice B.Seshasayana Reddy

13th December, 2005.

KM

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

–

–

–

–

–

–

–

–

–

–

–

–

W.P.No. 23794 OF 2005

13th December 2005